

AMENDED IN ASSEMBLY JANUARY 4, 2006

AMENDED IN ASSEMBLY APRIL 25, 2005

AMENDED IN ASSEMBLY MARCH 31, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## ASSEMBLY BILL

**No. 984**

**Introduced by Assembly Member Laird  
(~~Coauthor: Assembly Member Berg~~)**

February 18, 2005

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~~An act to add Section 1714.43 to the Civil Code, relating to liability.~~ *An act to add Part 11 (commencing with Section 12999) to Division 6 of the Water Code, relating to water.*

### LEGISLATIVE COUNSEL'S DIGEST

AB 984, as amended, Laird. ~~Liability: genetically engineered plants.~~ *Tamarisk plant control.*

*Existing law grants to the Department of Water Resources various duties relating to the supervision of the state's water resources.*

*This bill would authorize the department, in collaboration with other entities, to cooperate with the federal government, other Colorado River basin states, and other entities for the purpose of preparing a plan to control or eradicate tamarisk plants in the Colorado River watershed. The bill would require the department, the Department of Food and Agriculture, the Department of Fish and Game, and the Colorado River Board of California to seek to collaborate with affected California water agencies and other appropriate entities in that preparation.*

*The bill would require the department, in collaboration with other entities, to implement the plan within California upon the*

*appropriation of funds for that purpose. The bill would require the department, the Department of Food and Agriculture, the Department of Fish and Game, and the Colorado River Board of California to seek to collaborate with affected California water agencies and other appropriate entities in that implementation.*

~~Under existing law, everyone is generally responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself.~~

~~This bill would enact the Food Integrity and Farmer Protection Act, and would provide that the manufacturer of a genetically engineered plant, as defined, is liable for the contamination of a farm product, facility, or other property of any producer, grain and seed cleaner, handler, or processor by that plant. The bill would authorize the prevailing plaintiff in an action under these provisions to recover compensatory damages for injury, reasonable attorney's fees, and other litigation expenses. The bill would provide that a manufacturer has a defense to liability if specified conditions are met or if the gross negligence of another caused the injury. The bill would provide that the liability created by these provisions may not be waived or otherwise avoided by contract or other means. The bill would further make legislative findings and declarations regarding California's agricultural industry and the impact that genetically modified plants may have upon that industry.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. The Legislature finds and declares all of the*
- 2     *following:*
- 3     *(a) Tamarisk is a small tree or large shrub that was imported*
- 4     *from Eastern Europe in the 1800s for use as windbreaks and*
- 5     *erosion control.*
- 6     *(b) Tamarisk is spreading across the West, including covering*
- 7     *hundreds of thousands of acres in the Colorado River Basin,*
- 8     *almost entirely along waterways.*

1 (c) *Tamarisk* easily out-competes native habitat, such as  
2 willows and cottonwoods, and has very little habitat value  
3 compared to native vegetation.

4 (d) Because of its delicate and expansive leaf structure,  
5 tamarisk on a per-acre basis takes up and evaporates  
6 substantially more water than native vegetation.

7 (e) Colorado River flows have been very low for the last six  
8 years because of increasing human uses and very low rainfall,  
9 and because tamarisk is taking up significantly more water than  
10 the native vegetation that it replaces.

11 (f) If low riverflows continue, dwindling reservoir storage will  
12 be insufficient to continue historical levels of diversions and  
13 diversions will have to be curtailed, with substantial impacts to  
14 the economies of the seven states in the Colorado River  
15 watershed.

16 (g) Environmental mitigation and restoration programs, such  
17 as the lower Colorado River Multi-Species Conservation  
18 Program and environmental mitigation measures for the  
19 Quantification Settlement Agreement on the lower Colorado  
20 River, may include projects that will replace invasive exotic  
21 vegetation with native vegetation. The state supports the  
22 eradication of invasive species by the Colorado River  
23 Multi-Species Conservation Program and other programs and  
24 encourages cooperation with these programs to increase the  
25 available native wetland and riparian vegetation in the Colorado  
26 River watershed.

27 (h) The state seeks to encourage the federal government, basin  
28 states, and water agencies to develop a program to control or  
29 eradicate tamarisk within each state's jurisdiction.

30 (i) Controlling tamarisk in the Colorado River watershed  
31 entails a large and costly task, but if it is not undertaken, there  
32 will be significant economic and environmental consequences for  
33 California and the other basin states.

34 SEC. 2. Part 11 (commencing with Section 12999) is added to  
35 Division 6 of the Water Code, to read:

36  
37 PART 11. TAMARISK PLANT CONTROL  
38

39 12999. (a) The department, in collaboration with the  
40 Department of Food and Agriculture, the Department of Fish

1 and Game, and the Colorado River Board of California may  
2 cooperate with the federal government, the other Colorado River  
3 Basin states, and other entities for the purpose of preparing a  
4 plan to control or eradicate tamarisk in the Colorado River  
5 watershed. The department, the Department of Food and  
6 Agriculture, the Department of Fish and Game, and the  
7 Colorado River Board of California shall seek to collaborate  
8 with affected California water agencies and other appropriate  
9 entities in that preparation. The plan shall include the  
10 reestablishment of native vegetation and the identification of  
11 potential federal and nonfederal funding sources for  
12 implementation pursuant to subdivision (b).

13 (b) The department, in collaboration with the Department of  
14 Food and Agriculture, the Department of Fish and Game, the  
15 Colorado River Board of California, and appropriate federal  
16 agencies, shall implement the plan within California upon the  
17 appropriation of funds for that purpose. The department, the  
18 Department of Food and Agriculture, the Department of Fish  
19 and Game, and the Colorado River Board of California shall  
20 seek to collaborate with affected California water agencies and  
21 other appropriate entities in the implementation of the plan.

22 (c) This section does not preclude the department or any other  
23 entity from expending bond funds or nonstate funds for the  
24 control or eradication of tamarisk in the Colorado River  
25 watershed.

26 ~~SECTION 1. This act shall be known and may be cited as the~~  
27 ~~Food Integrity and Farmer Protection Act.~~

28 ~~SEC. 2. The Legislature finds and declares all of the~~  
29 ~~following:~~

30 ~~(a) Agricultural industries are vital components of California's~~  
31 ~~economy, creating 1.1 million jobs in the state.~~

32 ~~(b) California is the leading agricultural state in the country,~~  
33 ~~producing more than 250 commodities and farm gate revenues~~  
34 ~~totaling nearly \$30 billion dollars annually, of which nearly \$6.5~~  
35 ~~billion dollars is from exports.~~

36 ~~(c) California is a leading producer of organic crops,~~  
37 ~~producing more than 200 products totaling \$605 million dollars~~  
38 ~~in 2003.~~

1 ~~(d) California has a unique, national reputation for producing~~  
2 ~~high-quality crops and its agricultural heritage is dependent on~~  
3 ~~maintaining this reputation.~~

4 ~~(e) More than 97 percent of California farms are family farms~~  
5 ~~or partnerships.~~

6 ~~(f) California has a diverse agricultural bounty, including~~  
7 ~~many specialty crop commodities.~~

8 ~~(g) Genetically engineered plants have been shown to be~~  
9 ~~dispersed into the environment through pollen drift, seed~~  
10 ~~commingling, and inadvertent transfer of seeds by humans,~~  
11 ~~animals, and weather events.~~

12 ~~(h) The unintended presence of genetically engineered plants~~  
13 ~~and material in agricultural crops can have devastating economic~~  
14 ~~impacts for producers who sell in organic markets and foreign~~  
15 ~~markets that prohibit or reject products that contain genetically~~  
16 ~~engineered material.~~

17 ~~(i) The liability for the uncontrollable movement of genetically~~  
18 ~~engineered material is being unfairly passed from manufacturers~~  
19 ~~of genetically engineered plants to innocent and unsuspecting~~  
20 ~~farmers.~~

21 ~~(j) It is in the interest of the state to ensure that the use of~~  
22 ~~genetically engineered plants in California for agricultural~~  
23 ~~purposes is conducted in a manner that does not result in~~  
24 ~~economic loss resulting from the unintended presence of~~  
25 ~~genetically engineered materials in crops other than those for~~  
26 ~~which the use is authorized by the manufacturer. It is further in~~  
27 ~~the interest of the state to ensure that innocent farmers and farm~~  
28 ~~businesses are shielded from legal liability for the presence of~~  
29 ~~genetically engineered material in their crops without their~~  
30 ~~knowledge and beyond their control.~~

31 ~~SEC. 3.—Section 1714.43 is added to the Civil Code, to read:~~

32 ~~1714.43. (a) As used in this section, the following definitions~~  
33 ~~apply:~~

34 ~~(1) “Farm product” includes every agricultural, horticultural,~~  
35 ~~viticultural, or vegetable product of the soil, honey and beeswax,~~  
36 ~~oilseeds, poultry, poultry product, livestock product, and~~  
37 ~~livestock for immediate slaughter. It does not include timber or~~  
38 ~~any timber product, milk or any milk product, any aquacultural~~  
39 ~~product, or cattle sold to any person who is bonded under the~~

1 federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et  
2 seq.).

3 (2) “Genetically engineered plant” means a plant or any plant  
4 part or material, including, but not limited to, seeds and pollen, in  
5 which the genetic material has been changed through modern  
6 biotechnology in a way that does not occur naturally by  
7 multiplication or natural recombination.

8 (3) “Grain and seed” means any grain, seeds, rice, beans, and  
9 any other farm product that is customarily cleaned by grain and  
10 seed cleaners.

11 (4) “Grain and seed cleaner” means a person that is lawfully  
12 engaged in the business of cleaning grain and seeds for others.

13 (5) “Handler” means any person engaged in this state in the  
14 business of marketing farm products, including persons engaged  
15 in the drying, milling, or storing of a farm product.

16 (6) “Injury” means economic damage or loss, including, but  
17 not limited to, all of the following:

18 (A) Loss of any price premium that would have accrued to a  
19 producer, grain and seed cleaner, handler, or processor by  
20 contract or other marketing arrangement or that would have been  
21 otherwise reasonably available to those entities through ordinary  
22 commercial channels.

23 (B) Any additional transportation, storage, handling, or related  
24 charges or costs incurred by the producer, grain and seed cleaner,  
25 handler, or processor that would not have been incurred in the  
26 absence of genetically engineered plant material.

27 (C) Any judgment, charge, or penalty for which the producer,  
28 grain and seed cleaner, handler, or processor of nongenetically  
29 engineered products is liable because of breach of contract,  
30 including loss of organic certification for failure to deliver a crop  
31 or shipment free of genetically engineered plant material or for  
32 delivering a crop or shipment exceeding any contractually agreed  
33 tolerances for the presence of genetically engineered plant  
34 material.

35 (D) Market price reductions incurred by a producer, grain and  
36 seed cleaner, handler, or processor, resulting from loss of farm  
37 product exports, including foreign and domestic markets.

38 (E) Loss of livelihood or reputation of a producer, grain and  
39 seed cleaner, handler, or processor caused by the presence of

1 genetically engineered plant material in the farm product of those  
2 entities:

3 (7) “Manufacturer” means a person, corporation, or any other  
4 entity that makes or commercializes a genetically engineered  
5 plant, other than a producer, handler, processor, or person  
6 engaged in noncommercial activities.

7 (8) “Modern biotechnology” means the application of in vitro  
8 nucleic acid techniques, fusion of cells, including protoplast  
9 fusion, or hybridization techniques beyond the taxonomic family  
10 that overcome natural physiological, reproductive, or  
11 recombination barriers and that are not techniques used in  
12 traditional breeding and selection, including, but not limited to,  
13 all of the following:

14 (A) Recombinant deoxyribonucleic acid (DNA);

15 (B) Direct injection of nucleic acid into cells or organelles;

16 (C) Recombinant DNA techniques that use vector systems and  
17 techniques involving the direct introduction into the organism of  
18 hereditary materials prepared outside the organism, such as  
19 microinjection, macroinjection, chemoporation, electroporation,  
20 microencapsulation, and liposome fusion.

21 (9) “Person” includes any individual, partnership, limited  
22 liability company, limited liability partnership, corporation, firm,  
23 company, or any other entity doing business in California.

24 (10) “Processor” means any person engaged in the business of  
25 processing or manufacturing any farm product that solicits, buys,  
26 contracts to buy, or otherwise takes title to, or possession or  
27 control of, any farm product from the producer of the farm  
28 product for the purpose of processing or manufacturing it and  
29 selling, reselling, or redelivering it in any dried, canned,  
30 extracted, fermented, distilled, frozen, eviscerated, or other  
31 preserved or processed form. It does not, however, include any  
32 retail merchant that has a fixed or established place of business in  
33 this state and does not sell at wholesale any farm product that is  
34 processed or manufactured by that merchant.

35 (11) “Producer” means any person that is engaged in the  
36 business of growing or producing any farm product.

37 (b) (1) The manufacturer of a genetically engineered plant is  
38 liable for the contamination of a farm product, facility, or other  
39 property of any producer, grain and seed cleaner, handler, or  
40 processor by the genetically engineered plant. The prevailing

1 plaintiff in an action under this section may recover  
2 compensatory damages for injury, reasonable attorney's fees, and  
3 other litigation expenses.

4 (2) The liability created by this section may not be waived or  
5 otherwise avoided by contract or other means.

6 (3) A producer who is not in breach of a contract for the  
7 purchase or use of a genetically engineered plant and who  
8 unknowingly comes into possession of or uses that genetically  
9 engineered plant as a result of natural reproduction and  
10 cross-pollination, seed mixing, or other commingling or  
11 unintended presence shall not be liable for any injuries, claims,  
12 losses, or expenses, including attorney's fees and damages for  
13 infringement of any patent right held by the manufacturer of that  
14 genetically engineered plant, caused by the use of the genetically  
15 engineered plant.

16 (e) A manufacturer shall have a defense to liability under this  
17 section if the court finds any of the following:

18 (1) That all of the following conditions are met:

19 (A) The producer or his or her agent acted in gross negligence.

20 (B) The producer received and signed a contract with the  
21 manufacturer.

22 (C) The producer received a training manual from the  
23 manufacturer.

24 (D) The court finds that the injury would not have occurred  
25 had the producer or his or her agent followed the terms of the  
26 manufacturer's contract and training manual.

27 (2) Any person not included under paragraph (1) acted in a  
28 grossly negligent manner that caused injury from the use of a  
29 genetically engineered plant manufactured by the manufacturer.

30 (3) The manufacturer establishes that a producer or other  
31 person acted in a manner that was willfully intended to create  
32 contamination of a farm product, facility, or other property with  
33 genetically engineered material.

34 (d) (1) A seed contract for the purchase of seeds or plant parts  
35 in California is governed by the laws of California.

36 (2) Any provision of a seed contract executed in California  
37 that purports to waive the provisions of this section, to choose the  
38 laws of another jurisdiction to govern the contract, or to choose a  
39 forum for adjudication of disputes arising out of the contract that



1 ~~would not otherwise have jurisdiction over the parties to the~~  
2 ~~contract, is void and unenforceable.~~

3 ~~(3) The proper venue for an action under this section is the~~  
4 ~~superior court in the county in which the injury is alleged to have~~  
5 ~~occurred.~~

6 ~~(e) The provisions of this section are severable. If any~~  
7 ~~provision of this section or its application is held invalid, that~~  
8 ~~invalidity shall not affect other provisions or applications that can~~  
9 ~~be given effect without the invalid provision or application.~~

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